STATE OF MICHIGAN

COURT OF APPEALS

KATHRYN BECK and ERIC BECK,

Plaintiffs-Appellants,

V

BATTS, INC.,

Defendant-Appellee.

UNPUBLISHED
September 11, 2003

No. 240027
Ottawa Circuit Court
LC No. 00-038200-NO

Before: Markey, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Kathryn Beck worked for defendant as a production worker. She worked on an injection mold press that used molds heated to temperatures ranging from 400 to 600 degrees Fahrenheit. Her right hand became caught in the press. Defendant's employees removed the top cover of the press in order to activate a pressure valve and release the press. Kathryn Beck's hand remained trapped in the press during this process. She sustained injuries, including severe burns, to her hand, and did not return to work for defendant. She receives worker's compensation benefits.

Plaintiffs filed suit pursuant to MCL 418.131(1), the intentional tort exception to the Worker's Disability Compensation Act, MCL 418.101 *et seq*. The complaint alleged that Kathryn Beck sustained injuries because defendant deliberately: (1) failed to contact emergency personnel in a timely manner out of concern that emergency personnel would damage the press; (2) failed to have on the premises an unlocking device that would have disengaged the press; (3) failed to have personnel on site who could disengage the press; and (4) failed to turn off the heat to the press or to take other action to cool Kathryn Beck's hand. Eric Beck sought damages for loss of consortium.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiffs failed to produce any evidence that Kathryn Beck's injuries resulted from an intentional tort. The trial court granted defendant's motion, noting that the evidence showed that as defendant's employees worked to free Kathryn Beck's hand they were concerned that their actions not cause the press to cycle again and cause her even more extensive injury. The trial

court concluded that no genuine issue of fact existed as to whether defendant had actual knowledge that an injury was certain to occur.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

MCL 418.131(1) provides:

> The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employee had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law.

To avoid the application of MCL 418.131(1), there must be a deliberate act by the employer and a specific intent that there be an injury. A deliberate act may be one of omission or commission. Specific intent exists if the employer has a purpose to bring about certain consequences. *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 169, 171; 551 NW2d 132 (1996). In addition, specific intent is established if an employer had actual knowledge that an injury was certain to occur, and willfully disregarded that knowledge. An injury is certain to occur if there is no doubt that it will occur, and an employer willfully disregards its knowledge of the danger when it disregards actual knowledge that an injury is certain to occur. *Id*., 174, 179. In order to show an injury was certain to occur, a plaintiff must establish that the employer subjected him to a continuously operative dangerous condition it knew would cause an injury. The evidence must show the employer refrained from warning the plaintiff about the dangerous condition. *Id*., 178. Actual knowledge is required. Constructive, implied, or imputed knowledge is insufficient. *McNees v Cedar Springs Stamping Co (After Remand)*, 219 Mich App 217, 224; 555 NW2d 481 (1996). An employer's knowledge of general risks is insufficient. *Agee v Ford Motor Co*, 208 Mich App 363, 366-367; 528 NW2d 768 (1995). Whether the facts alleged by the plaintiff are sufficient to constitute an intentional tort is a question of law for the trial court. Whether the facts are as the plaintiff alleges is a question for the jury. *Gray v Morley*, 460 Mich 738, 742-743; 596 NW2d 922 (1999).

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm the trial court's decision. Plaintiffs do not contend that defendant purposefully acted with the intent to injure Kathryn Beck by crushing her hand. In addition, they do not contend that defendant had actual knowledge that Kathryn Beck's hand would become caught in the press, and willfully disregarded that knowledge. Rather, plaintiffs maintain that, after Kathryn Beck's hand became caught in the hot press, defendant had actual knowledge a burn injury was certain to occur and willfully disregarded that knowledge. The evidence showed that after Kathryn Beck's hand became caught in the press defendant's employees were concerned with freeing her hand without causing further injury. Defendant's employees decided against starting the machine to attempt to move the mold or to connect and

operate a chilling device to avoid the possibility that the mold would close completely and further crush Kathryn Beck's hand. Defendant's failure to have a hydraulic jack on hand which might have been able to pry open the press did not constitute willful disregard of actual knowledge that a burn injury was certain to occur. No evidence showed such a device had ever been needed for that purpose. The laws of probability do not constitute actual knowledge that an injury is certain to occur. *Palazzola v Karmazin Products Corp*, 223 Mich App 141, 149; 565 NW2d 868 (1997). The evidence showed that after Kathryn Beck's hand became trapped defendant acted to free her hand as quickly as possible while at the same time attempting to avoid further injury to her. Plaintiffs did not put forth evidence to show that a genuine issue of fact existed as to whether defendant had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The trial court did not err in concluding that the facts alleged by plaintiffs did not constitute an intentional tort. *Gray*, *supra*. Defendant was properly granted summary disposition.

Affirmed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad